

## Retirement Villages Amendment Bill 2012

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Western Australia

LEGISLATIVE COUNCIL

*(As amended in Committee)*

## **Retirement Villages Amendment Bill 2012**

**A Bill for**

**An Act to amend the *Retirement Villages Act 1992*.**

The Parliament of Western Australia enacts as follows:

**s. 1**

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1     **1.       Short title**

2             This is the *Retirement Villages Amendment Act 2012*.

3     **2.       Commencement**

4             This Act comes into operation as follows —

- 5               (a)   sections 1 and 2 — on the day on which this Act  
6                      receives the Royal Assent;
- 7               (b)   the rest of the Act — on a day fixed by proclamation,  
8                      and different days may be fixed for different provisions.

9     **3.       Act amended**

10            This Act amends the *Retirement Villages Act 1992*.

11    **4.       Section 3 amended**

12       (1)   In section 3(1) insert in alphabetical order:

13

14                    *levy* means a single amount that the residents of a  
15                    retirement village are required to pay to recover an  
16                    unforeseen operating expense of the retirement village  
17                    not provided for in the recurrent charges;

18

19       (2)   In section 3(1) in the definition of *premium* delete paragraph (b)  
20            and insert:

21

22                    (b)   a levy or recurrent charges;

23

24       (3)   In section 3(1) in the definition of *service contract* delete  
25            paragraph (g) and insert:

26

27                    (g)   recreation services or amenities or  
28                    entertainment services or amenities; or

29

1       (4) In section 3(1) in the definition of *service contract* after each of  
2 paragraphs (a) to (f) insert:

3

4               or

5

6       **5. Section 6 amended**

7       (1) In section 6(1) delete “subsection (2),” and insert:

8

9               subsection (2) and without affecting the operation of  
10 sections 23(4) and 24(6),

11

12       (2) In section 6(2) delete “A” and insert:

13

14               Unless this Act provides that this subsection does not have  
15 effect in relation to the provision concerned, a

16

17       **6. Section 11 amended**

18       (1) At the beginning of section 11 insert:

19

20               (1) In this section —

21                       *statutory manager* means a person appointed under  
22 section 75B and includes an agent of, or a person  
23 employed or engaged by, a statutory manager who is  
24 assisting the statutory manager in the performance of  
25 the functions of the statutory manager under this Act.

26

27       (2) In section 11:

28               (a) delete “No” and insert:

29

30               (2) No

31

**s. 7**

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- 1                   (b) after “of the Department” insert:  
2  
3                   or a statutory manager  
4  
5                   (c) delete “or the officer” and insert:  
6  
7                   the officer or the statutory manager  
8  
9                   (d) delete “Commissioner or the Department under this Act  
10                  but” and insert:  
11  
12                  Commissioner, the Department or the statutory manager  
13                  under this Act but, except as stated in subsection (3),  
14  
15       (3) At the end of section 11 insert:  
16  
17               (3) The Crown is relieved of any liability that it might  
18               otherwise have had for any act or omission, as  
19               described in subsection (2), by a statutory manager.  
20  
21       **7. Section 13 amended**  
22       (1) In section 13(2) delete “5 working days” and insert:  
23  
24               10 working days  
25  
26       (2) After section 13(3) insert:  
27  
28               (4A) A person must not demand or receive any fee or charge  
29               for any information or document given under  
30               subsection (2) or (3).  
31               Penalty: a fine of \$5 000.  
32

**8. Section 14A inserted**

After section 13 insert:

**14A. Residence contracts to comply with prescribed requirements**

- (1) The regulations may provide for provisions or matters that must be included, or provisions or matters that must not be included, in residence contracts or in residence contracts of a specified kind.
- (2) A person must not enter into a residence contract with a prospective resident unless the residence contract, otherwise than because of the operation of subsection (3) or (4), complies with any regulations made for the purposes of subsection (1).  
Penalty: a fine of \$20 000.
- (3) If regulations made for the purposes of subsection (1) provide that residence contracts or residence contracts of a specified kind must contain a provision in the terms specified in those regulations, a residence contract to which those regulations apply that does not include a provision in the specified terms is to be taken to include that provision.
- (4) If regulations made for the purposes of subsection (1) provide that any provision or matter must not be included in residence contracts or residence contracts of a specified kind, a residence contract to which those regulations apply that includes any provision or matter contrary to those regulations is void to the extent of the provision or matter.
- (5) The regulations may provide that section 6(2) does not have effect in relation to any specified regulations, or any specified provisions of regulations, made for the purposes of subsection (1).

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**9. Section 14 amended**

In section 14(1):

(a) in paragraph (a) delete “5 working days” and insert:

7 working days

(b) in paragraph (b) delete “10 working days” and insert:

17 working days

**10. Section 18 amended**

(1) Delete section 18(1)(a) and insert:

(a) the person by or on whose behalf the premium was paid —

(i) enters into occupation of the residential premises; or

(ii) is entitled to enter into occupation of the residential premises and is no longer entitled to rescind the residence contract under section 14 because the applicable period referred to in that section has expired,

whichever occurs first; or

(2) After section 18(1) insert:

(2A) If —

(a) a premium is paid to an administering body and subsection (2) does not apply; and



1                   (b) the premium is not held in trust or invested as  
2                   required by subsection (1),

3                   the administering body is guilty of an offence.

4                   Penalty: a fine of \$20 000

5

6           (3) In section 18(3) in the Penalty before “\$5 000” insert:

7

8                   a fine of

9

10          (4) Delete section 18(5) and insert:

11

12           (5) If —

13                   (a) a question affecting entitlement to or  
14                   disposition of the premium is required by  
15                   subsection (4) to be determined by reference to  
16                   the residence contract and the administering  
17                   body fails to act in accordance with that  
18                   requirement; or

19                   (b) interest and accretions arising from investment  
20                   of the premium are required by  
21                   subsection (4)(a) to be paid to the prospective  
22                   resident and that interest and those accretions  
23                   are not paid accordingly,

24                   the administering body is guilty of an offence.

25                   Penalty: a fine of \$20 000.

26

s. 11

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11. Sections 23 to 25 inserted

At the end of Part 3 insert:

23. Recurrent charges payable by former residents

(1) In this section —

*former resident* means a former resident of a retirement village who has permanently vacated residential premises in the retirement village and who does not have an interest in the retirement village as a tenant in common or as an owner of a lot under the *Strata Titles Act 1985* in relation to the residential premises in the retirement village that he or she formerly occupied;

*permanently vacated*, in relation to a former resident and residential premises in a retirement village, means that —

- (a) if required by the residence contract — the administering body has been given notice of the former resident's intention to vacate the residential premises; and
- (b) the goods and belongings of the former resident have been removed from the residential premises; and
- (c) the former resident has ceased to reside in the residential premises; and
- (d) the right to exclusively occupy the residential premises has been given up by the former resident (or, if the former resident is deceased, by the estate of the former resident) by returning the keys to the residential premises to the administering body;

- 1                    ***recurrent charges***, except in subsection (6), means  
2 recurrent charges —
  - 3            (a) that are payable in respect of the residential  
4 premises in a retirement village that a former  
5 resident formerly occupied; and
  - 6            (b) that arise —
    - 7                    (i) after those premises have been  
8 permanently vacated by the former  
9 resident; and
    - 10                   (ii) on or after the commencement of the  
11 *Retirement Villages Amendment Act*  
12 *2012* section 11.
- 13            (2) This section applies to a former resident of residential  
14 premises in a retirement village, whether that former  
15 resident permanently vacated those premises before or  
16 after the commencement of the *Retirement Villages*  
17 *Amendment Act 2012* section 11.
- 18            (3) Subject to subsection (4), a former resident's liability  
19 to pay recurrent charges —
  - 20            (a) begins when the residential premises have been  
21 permanently vacated by the former resident;  
22 and
  - 23            (b) ceases in accordance with the regulations.
- 24            (4) If a former resident's residence contract provides for  
25 the former resident's liability to pay recurrent charges  
26 to cease at a time that would occur before the time  
27 provided for in regulations made for the purposes of  
28 subsection (3)(b), that liability ceases in accordance  
29 with that contract.

s. 11

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- 1           (5) The administering body of a retirement village must  
2           pay recurrent charges, at the time when a former  
3           resident would have been required to pay those charges  
4           if the former resident were still liable to pay them, that  
5           are payable in respect of the period that —  
6           (a) begins when the former resident's liability to  
7           pay the recurrent charges ceases in accordance  
8           with regulations made for the purposes of  
9           subsection (3) or with the residence contract  
10          referred to in subsection (4), as the case  
11          requires; and  
12          (b) ceases when a new resident of the residential  
13          premises becomes liable to pay the recurrent  
14          charges.  
15          (6) The administering body must not seek to recover from  
16          the residents of the retirement village, by increasing the  
17          recurrent charges payable by them or by demanding or  
18          receiving from them any additional fee or charge, any  
19          amount payable by the administering body under  
20          subsection (5).  
21          Penalty: a fine of \$20 000.  
22          (7) Section 6(2) does not have effect in relation to this  
23          section.  
24        **24. Recurrent charges may be deducted from premium**  
25        **repayable to former resident**  
26        (1) In this section —  
27        *former resident* has the meaning given in  
28        section 23(1);  
29        *recurrent charges* means recurrent charges —  
30        (a) that are payable in respect of the residential  
31        premises in a retirement village that a former  
32        resident formerly occupied; and

- 1 (b) that arise —
- 2 (i) after those premises have been
- 3 permanently vacated by the former
- 4 resident; and
- 5 (ii) on or after the commencement of the
- 6 *Retirement Villages Amendment*
- 7 *Act 2012* section 11.
- 8 (2) If a premium is repayable in whole or in part to a
- 9 former resident, the former resident may elect, by
- 10 notice in writing given to the administering body of the
- 11 retirement village, to pay any recurrent charges for
- 12 which he or she is liable (including any interest payable
- 13 in respect of those charges under subsection (4)) by
- 14 their deduction from the amount of premium repayable.
- 15 (3) A former resident who elects to pay recurrent charges
- 16 under subsection (2) may give the notice to the
- 17 administering body at any time after the former
- 18 resident has permanently vacated the residential
- 19 premises that he or she formerly occupied.
- 20 (4) Subject to subsection (6) and to any regulations made
- 21 for the purposes of this subsection, a former resident
- 22 who elects to pay recurrent charges under
- 23 subsection (2) is liable to pay interest to the
- 24 administering body in respect of those charges if the
- 25 effect of that election is to defer the payment of the
- 26 charges.
- 27 (5) Interest is payable —
- 28 (a) from the time the recurrent charges would,
- 29 apart from subsection (2), be payable by the
- 30 former resident until their deduction from the
- 31 premium repayable to the former resident; and
- 32 (b) at the rate determined in the prescribed manner.

**s. 11**

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- 1           (6) If —
- 2               (a) the administering body and the former resident
- 3               agree to a rate of interest that is lower than the
- 4               rate referred to in subsection (5)(b); or
- 5               (b) the former resident's residence contract
- 6               specifies a rate of interest for the purposes of
- 7               this section that is lower than the rate referred
- 8               to in subsection (5)(b),
- 9           interest is payable by the former resident at that lower
- 10           rate.
- 11           (7) If the effect of the election under subsection (2) is to
- 12           defer the payment by a former resident of any recurrent
- 13           charges, the administering body —
- 14               (a) must pay the recurrent charges at the time when
- 15               the former resident would have been required to
- 16               pay those charges apart from subsection (2);
- 17               and
- 18               (b) may deduct the amount paid from the premium
- 19               that is repayable to the former resident.
- 20           (8) A former resident is to be taken to have paid any
- 21           recurrent charges in respect of which a deduction is
- 22           made from the premium that is repayable to the former
- 23           resident.
- 24           (9) If a former resident elects to pay any recurrent charges
- 25           under subsection (2), the administering body must not
- 26           demand or receive payment of those charges otherwise
- 27           than in accordance with that election.
- 28           Penalty: a fine of \$20 000.
- 29           (10) Section 6(2) does not have effect in relation to this
- 30           section.

1       **25.     Administering body not to require payment in**  
2       **respect of prescribed matters**

- 3           (1) The administering body of a retirement village must  
4               not demand or receive payment from a resident or  
5               former resident in respect of any matter prescribed for  
6               the purposes of this section.

7               Penalty: a fine of \$20 000.

- 8           (2) Section 6(2) does not have effect in relation to this  
9               section.  
10

11       **12.     Section 52 amended**

12           After section 52(2) insert:  
13

- 14           (3) Subsection (1)(b) does not apply to —  
15               (a) an order made under section 55(3) or 57A(4) or  
16               Part 5A; or  
17               (b) if the order is made in relation to a residence  
18               contract — an order made under section 56(4).  
19

20       **13.     Section 55 inserted**

21           After section 54 insert:  
22

23       **55.     Applications to SAT in relation to residence**  
24       **contracts**

- 25           (1) If a dispute arises between the parties to a residence  
26               contract as to the residence contract's compliance with  
27               a requirement of regulations made for the purposes of  
28               section 14A(1) —

- 29               (a) either party to the residence contract; or

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- 1                   (b) if the dispute has been brought to the attention  
2                   of the Commissioner — the Commissioner,  
3                   may make an application in relation to the matter to the  
4                   State Administrative Tribunal.
- 5           (2) If the State Administrative Tribunal is of the opinion  
6           that an order, if made under subsection (3), may be  
7           relevant to other residence contracts (including  
8           residence contracts that relate to another retirement  
9           village), the State Administrative Tribunal —
- 10                   (a) may order the administering body of a  
11                   retirement village or other person to provide the  
12                   State Administrative Tribunal with specified  
13                   information or documents in relation to any  
14                   residence contract; and
- 15                   (b) on its own initiative or at the request of the  
16                   administering body or other person — may  
17                   order that the administering body or other  
18                   person be joined as a party to the proceeding  
19                   under this section.
- 20           (3) The State Administrative Tribunal may, on an  
21           application made under this section, order —
- 22                   (a) the variation or cancellation of any of the terms  
23                   of the residence contract, as specified in the  
24                   order;
- 25                   (b) specific performance of the residence contract;
- 26                   (c) the payment of a sum of money,  
27           and may make such other orders as the State  
28           Administrative Tribunal considers appropriate and may  
29           declare that the order applies to any residence contracts  
30           specified in the order, and the order is to have effect  
31           accordingly.
- 32           (4) Subsection (2) does not limit the *State Administrative*  
33           *Tribunal Act 2004* section 35 or 38.



1   **14.     Section 56 amended**

2       (1)   Before section 56(1) insert:

3

4           (1A)   A reference in this section to a service contract  
5                   includes a reference to a residence contract but only to  
6                   the extent that the residence contract provides for the  
7                   provision to a resident of a service or amenity that may  
8                   be provided to the resident under a service contract.

9

10       (2)   Delete section 56(3) and insert:

11

12           (3)   If the State Administrative Tribunal is of the opinion  
13                   that an order, if made under subsection (4), may be  
14                   relevant to other service contracts (including service  
15                   contracts that relate to another retirement village), the  
16                   State Administrative Tribunal —

17                   (a)   may order the administering body of a  
18                           retirement village or other person to provide the  
19                           State Administrative Tribunal with specified  
20                           information or documents in relation to any  
21                           service contract; and

22                   (b)   on its own initiative or at the request of the  
23                           administering body or other person — may  
24                           order that the administering body or other  
25                           person be joined as a party to the proceeding  
26                           under this section.

27

28       (3)   Before section 56(4)(a) insert:

29

30                   (aa)   the variation or cancellation of any of the terms  
31                           of the service contract, as specified in the order;

32

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1       (4) After section 56(4) insert:

2

3               (5) Subsection (3) does not limit the *State Administrative*  
4               *Tribunal Act 2004* section 35 or 38.

5

6       **15. Section 57A inserted**

7               After section 56 insert:

8

9               **57A. Disputes in relation to recurrent charges or levy**  
10              **payable by residents**

11              (1) This section applies if a dispute arises between the  
12              residents of a retirement village and the administering  
13              body of the retirement village regarding an increase in  
14              recurrent charges or the imposition of a levy.

15              (2) If the residents pass a special resolution that authorises  
16              the application to be made, the residents may make an  
17              application in relation to the matter in dispute to the  
18              State Administrative Tribunal.

19              (3) In subsection (2) —  
20              *special resolution* means a resolution passed at a  
21              meeting of the residents of a retirement village that is  
22              held in accordance with the requirements in an  
23              applicable code for passing a special resolution.

24              (4) The State Administrative Tribunal may, on an  
25              application made under this section, make such orders  
26              as the State Administrative Tribunal considers  
27              appropriate.

28              (5) Nothing in this section limits the matters in relation to  
29              which an application may be made under section 56.

30              (6) Section 6(2) does not have effect in relation to this  
31              section.

---

**16. Part 5A inserted**

After section 74 insert:

**Part 5A — Statutory manager**

**75A. Terms used**

In this Part —

*assets*, of the administering body of a retirement village, means —

- (a) if the owner of land in the retirement village is the sole administering body of the retirement village — that land and any other property held for the purposes of the retirement village by the owner; or
- (b) if the owner of land in the retirement village is not the sole administering body of the retirement village — the land and property of the owner referred to in paragraph (a) and any other property held for the purposes of the retirement village by an administering body other than the owner;

*functions*, of the administering body of a retirement village, means the powers and duties that the administering body exercises and performs in the administration of the retirement village under this Act or another written law;

*property* includes money, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit;

*statutory manager* means a person appointed under section 75B.

1           **75B.    SAT may appoint statutory manager on application**  
2                   **of Commissioner**

- 3           (1) The State Administrative Tribunal may, on application  
4               by the Commissioner under this section, make an order  
5               appointing one or more persons specified in the  
6               application to perform —
- 7               (a) all the functions of the administering body of a  
8                   retirement village; or
- 9               (b) specified functions of the administering body of  
10               a retirement village; or
- 11               (c) all the functions other than specified functions  
12               of the administering body of a retirement  
13               village,
- 14               and may make such other orders as the State  
15               Administrative Tribunal thinks fit.
- 16           (2) An application under this section is to be accompanied  
17               by —
- 18               (a) a copy of the consent given under  
19                   section 75C(1) by each person to be appointed;  
20                   and
- 21               (b) the Commissioner's recommendations as to the  
22                   statutory manager's terms and conditions to be  
23                   dealt with in the order under section 75E.
- 24           (3) The Commissioner must give a copy of the application  
25               to the administering body.
- 26           (4) For the purposes of the *State Administrative Tribunal*  
27               *Act 2004* section 36, the administering body is a party  
28               to the proceeding on an application under this section.
- 29           (5) The State Administrative Tribunal may make an order  
30               appointing a statutory manager only if the State  
31               Administrative Tribunal is satisfied that —
- 32               (a) the wellbeing or financial interests of the  
33                   residents of the retirement village may be at

- 1 risk if the administering body continued to
- 2 perform all the functions of the administering
- 3 body of the retirement village; or
- 4 (b) the administering body has contravened, or is
- 5 contravening, an order made by the State
- 6 Administrative Tribunal or a court in relation to
- 7 the administering body or the retirement
- 8 village; or
- 9 (c) the administering body has contravened, or is
- 10 contravening, section 18 or another provision of
- 11 this Act, or a provision of the regulations,
- 12 prescribed for the purposes of this subsection.
- 13 (6) Without limiting the matters to which the State
- 14 Administrative Tribunal may have regard for the
- 15 purposes of subsection (5)(a), for those purposes the
- 16 State Administrative Tribunal must have regard to any
- 17 prescribed provisions of any applicable code.
- 18 (7) If 2 or more persons are appointed under
- 19 subsection (1), a function of the administering body to
- 20 be performed by the statutory manager under this Part
- 21 may be performed by any one of them, or by any 2 or
- 22 more of them together, except to the extent that the
- 23 order appointing them provides otherwise.
- 24 (8) Unless sooner revoked, an order under this section has
- 25 effect for the period specified in the order.
- 26 (9) The State Administrative Tribunal is not to require the
- 27 Commissioner, as a condition of granting an
- 28 application under this section, to give an undertaking as
- 29 to damages.
- 30 **75C. Proposed statutory manager must consent to**
- 31 **appointment**
- 32 (1) The Commissioner is not to make an application for an
- 33 order under section 75B appointing a person to be a

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- 1 statutory manager unless the person has given the  
2 Commissioner written consent to the application.
- 3 (2) The order appointing a person to be a statutory  
4 manager does not have effect unless the person has  
5 given the Commissioner written consent under  
6 subsection (1) and has not withdrawn that consent as at  
7 the time of the appointment.
- 8 **75D. Variation and revocation of orders**
- 9 (1) In this section —  
10 *other persons* means —
- 11 (a) if an application is made under this section by  
12 the Commissioner — the administering body of  
13 the retirement village and the statutory  
14 manager;
- 15 (b) if an application is made under this section by  
16 the administering body of the retirement  
17 village — the Commissioner and the statutory  
18 manager;
- 19 (c) if an application is made under this section by  
20 the statutory manager — the Commissioner and  
21 the administering body of the retirement  
22 village.
- 23 (2) The State Administrative Tribunal may, on application  
24 by the Commissioner, the administering body of the  
25 retirement village or the statutory manager under this  
26 section, vary or revoke an order appointing a statutory  
27 manager under section 75B.
- 28 (3) The applicant must give a copy of the application to the  
29 other persons.
- 30 (4) The State Administrative Tribunal may give any  
31 directions it considers necessary or expedient for the  
32 purposes of this section.

- 1           (5) For the purposes of the *State Administrative Tribunal*  
2           *Act 2004* section 36, the other persons are parties to the  
3           proceeding on an application under this section.
- 4       **75E. Matters to be dealt with in order appointing a**  
5       **statutory manager**
- 6           (1) An order under section 75B appointing a statutory  
7           manager is to —
  - 8               (a) set out the terms and conditions that the State  
9               Administrative Tribunal considers appropriate  
10              to the appointment, including terms and  
11              conditions as to the remuneration and expenses  
12              payable to the statutory manager; and
  - 13              (b) specify the assets of the administering body of  
14              the retirement village that are to be under the  
15              control of the statutory manager; and
  - 16              (c) specify the assets of the administering body of  
17              the retirement village that may be applied for  
18              the purpose of providing funds for —
    - 19                   (i) the performance by the statutory  
20                   manager of the functions of the  
21                   administering body conferred on the  
22                   statutory manager under section 75B(1);  
23                   and
    - 24                   (ii) the payment of the remuneration and  
25                   expenses of the statutory manager.
- 26           (2) The State Administrative Tribunal may give any  
27           directions it considers necessary or expedient for the  
28           purposes of this section.
- 29           (3) Without limiting section 11, neither the Crown, the  
30           Minister nor the Commissioner is liable for the  
31           remuneration of a statutory manager or any expenses  
32           incurred by a statutory manager in performing any  
33           functions of the administering body of a retirement  
34           village.

1           **75F.    Other matters arising from appointment of**  
2                   **statutory manager**

3           (1) In this section —

4                   *appointed* means appointed by an order under  
5                   section 75B.

6           (2) The administering body of a retirement village must  
7                   not, during the period of a statutory manager's  
8                   appointment, perform any of the administering body's  
9                   functions that the statutory manager is appointed to  
10                  perform.

11                  Penalty: a fine of \$20 000.

12           (3) Subject to any terms and conditions to which the  
13                  appointment is subject, a statutory manager must  
14                  perform any function of the administering body that the  
15                  statutory manager is appointed to perform in  
16                  accordance with any residence contract, service  
17                  contract or other contract, agreement or  
18                  arrangement —

19                   (a) to which the administering body is a party; and

20                   (b) that relates to the performance of that function.

21           (4) Any act or thing done, in good faith, by or with the  
22                  consent of a statutory manager in the performance of  
23                  any function of the administering body that the  
24                  statutory manager is appointed to perform is valid and  
25                  effectual for the purposes of this Act.

26           (5) A statutory manager must, in accordance with the  
27                  regulations, provide the prescribed persons with the  
28                  prescribed written information about the performance  
29                  of any function of the administering body that the  
30                  statutory manager is appointed to perform.



**75G. Appointment of both statutory manager and external administrator**

(1) In this section —

*external administration* means external administration under the *Corporations Act 2001* (Commonwealth) Chapter 5;

*external administrator* means a person appointed under the *Corporations Act 2001* (Commonwealth) for the purposes of the external administration of the administering body of a retirement village.

(2) This section applies if the administering body of a retirement village is the subject of both —

(a) the appointment by an order under section 75B of a statutory manager; and

(b) the appointment of an external administrator.

(3) The statutory manager is under a duty to tell the external administrator of the appointment of the statutory manager, whether the appointment precedes, follows or happens at the same time as the appointment of the external administrator.

(4) The appointment of the statutory manager continues to have effect while the administering body is subject to external administration, but the statutory manager may perform any function that the statutory manager is appointed by an order under section 75B to perform —

(a) only if authorised in writing by the external administrator to do so; and

(b) subject to any condition or limitation specified in that authorisation.

1           **75H.   Administering body to cooperate with statutory**  
2                   **manager**

3           (1) In this section —

4                   *records* includes documents and information;

5                   *relevant* means relevant to the performance of a  
6                   function referred to in subsection (2).

7           (2) This section applies if a statutory manager is appointed  
8                   by an order under section 75B to perform any function  
9                   of the administering body of a retirement village.

10          (3) The administering body of a retirement village must  
11                   cooperate with the statutory manager to the extent  
12                   reasonably required by the statutory manager to  
13                   perform a function referred to in subsection (2).

14                   Penalty: a fine of \$20 000.

15          (4) Without limiting subsection (3), that subsection  
16                   requires the administering body —

17                   (a) to answer, orally or in writing, relevant  
18                   questions asked by the statutory manager; and

19                   (b) to produce to the statutory manager relevant  
20                   documents in the administering body's custody  
21                   or under the administering body's control; and

22                   (c) to give the statutory manager access to relevant  
23                   records stored electronically, including any  
24                   translation, code, password or other information  
25                   necessary to gain access to, or to interpret and  
26                   understand, those records; and

27                   (d) to give the statutory manager any other relevant  
28                   assistance the statutory manager reasonably  
29                   requires.

30          (5) The administering body must not hinder or obstruct the  
31                   statutory manager in the performance of a function  
32                   referred to in subsection (2).

33                   Penalty: a fine of \$20 000.

**75I. State Administrative Tribunal may require reports and recommendations from statutory manager**

- (1) The State Administrative Tribunal may, on its own initiative or on application by the Commissioner under this section, make an order directing a statutory manager to prepare a report and make recommendations concerning the retirement village in respect of which the statutory manager is appointed.
- (2) An order under subsection (1) is to specify the matters that are to be the subject of the statutory manager's report and recommendations and the period within which the report and recommendations are to be prepared.
- (3) The statutory manager must provide a copy of the report and recommendations to the State Administrative Tribunal and the Commissioner and to any other person the State Administrative Tribunal specifies in the order under subsection (1).

**17. Sections 76 to 77C inserted**

After section 75 insert:

**76. Persons who are not to be involved in administration of retirement villages**

- (1) Subject to section 77A, this section applies to these persons —
  - (a) a person who is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws;
  - (b) a person who has been convicted, within or outside Western Australia, of —
    - (i) an offence involving violence to another person punishable on conviction by

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- 1 imprisonment for not less than  
2 3 months; or
- 3 (ii) an offence involving fraud or dishonesty  
4 punishable on conviction by  
5 imprisonment for not less than  
6 3 months; or
- 7 (iii) an offence under *The Criminal Code*  
8 Chapter XXXI or an offence that, if  
9 committed in Western Australia, would  
10 constitute such an offence; or
- 11 (iv) a prescribed offence;
- 12 (c) a person who is disqualified from managing  
13 corporations under the *Corporations Act 2001*  
14 (Commonwealth) Part 2D.6;
- 15 (d) a person who was a director of, or concerned in  
16 the management of, a corporation, as defined in  
17 the *Corporations Act 2001* (Commonwealth)  
18 section 57A, when it was wound up otherwise  
19 than voluntarily;
- 20 (e) a person prescribed as a person to whom this  
21 section applies.
- 22 (2) A person to whom this section applies must not —
- 23 (a) be the administering body of a retirement  
24 village; or
- 25 (b) be in any way, whether directly or indirectly,  
26 concerned in the administration of a retirement  
27 village.
- 28 Penalty: a fine of \$20 000.
- 29 (3) In any proceeding taken for an offence against  
30 subsection (2), it is a defence to prove that, at the time  
31 the offence occurred, the accused held a current  
32 exemption certificate granted under section 77C.

- 1           (4) A person must not employ or engage a person to whom  
2           this section applies if the person's employment or  
3           engagement is or is to be in any way, whether directly  
4           or indirectly, concerned in the administration of a  
5           retirement village.

6           Penalty: a fine of \$20 000.

- 7           (5) In any proceeding taken for an offence against  
8           subsection (4), it is a defence to prove that, at the time  
9           the offence occurred, the person employed or engaged  
10          held a current exemption certificate granted under  
11          section 77C.

12           **77A.    Limitation of period for which section 76 applies to**  
13           **certain persons**

- 14          (1) Section 76 applies to a person referred to in  
15          subsection (1)(b) of that section, in relation to the  
16          person's conviction of an offence, only for the period  
17          of 5 years —  
18                  (a) from the time of the person's conviction; or  
19                  (b) if the conviction results in a term of  
20                  imprisonment, from the time of the person's  
21                  release from custody.
- 22          (2) Section 76 applies to a person referred to in  
23          subsection (1)(c) of that section, in relation to the  
24          person's disqualification from managing corporations,  
25          only for the period of 5 years from the time of that  
26          disqualification.
- 27          (3) Section 76 applies to a person referred to in  
28          subsection (1)(d) of that section, in relation to the  
29          winding up of a corporation, only for the period of  
30          5 years from the time of that winding up.

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1           **77B.    Offences by persons involved in administration of**  
2                   **retirement village**

3           (1) In this section —

4                   **relevant information**, in relation to a person, means  
5                   information as to the application of section 76 to the  
6                   person.

7           (2) A person —

8                   (a) whose employment or engagement is in any  
9                   way, whether directly or indirectly, concerned  
10                  in the administration of a retirement village;  
11                  and

12                  (b) who becomes a person to whom section 76  
13                  applies because of the occurrence, after that  
14                  employment or engagement has commenced, of  
15                  a bankruptcy, conviction, disqualification,  
16                  winding up or other matter relevant to that  
17                  section,

18                   must give relevant information to the person by whom  
19                   he or she is employed or engaged within 14 days after  
20                   that occurrence.

21                   Penalty: a fine of \$20 000.

22           (3) A person must not give relevant information that is  
23                   false or misleading to a person who employs or  
24                   engages, or who proposes to employ or engage, him or  
25                   her if the employment or engagement is or is to be in  
26                   any way, whether directly or indirectly, concerned in  
27                   the administration of a retirement village.

28                   Penalty: a fine of \$20 000.

**77C. Commissioner may grant exemption certificates**

- (1) The Commissioner may grant an exemption certificate to a person to whom section 76 applies if —
  - (a) the person applies for the certificate in the form approved by the Commissioner and pays the prescribed fee; and
  - (b) satisfies the Commissioner that neither the wellbeing nor financial interests of the residents of a retirement village will be at risk if the person —
    - (i) is the administering body of the retirement village; or
    - (ii) is in any way, whether directly or indirectly, concerned in the administration of the retirement village, as the case requires.
- (2) An exemption certificate may be granted subject to any condition or limitation the Commissioner considers appropriate and specifies in the certificate, which may include a limitation on the period during which the certificate has effect.
- (3) The Commissioner may at any time revoke an exemption certificate by written notice given to the person granted the certificate.
- (4) An exemption certificate is cancelled by force of this subsection if the person granted the certificate becomes a person to whom section 76 applies because of the occurrence, after the person has been granted the certificate, of a bankruptcy, conviction, disqualification, winding up or other matter relevant to that section.
- (5) A person must return his or her exemption certificate to the Commissioner within 14 days after the certificate is

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1                   revoked under subsection (3) or cancelled under  
2                   subsection (4).

3                   Penalty: a fine of \$20 000.

4   **18.       Section 80 amended**

5                   In section 80 delete “2 years” and insert:

6

7                   3 years

8

9   **19.       Section 82 amended**

10                  In section 82(3) delete “\$500.” and insert:

11

12                  \$5 000.

13

14   **20.       Schedule 1 Division 1 heading inserted**

15                  Before Schedule 1 clause 1 insert:

16

17                  **Division 1 — Provisions relating to commencement of Act**

18

19   **21.       Schedule 1 Division 2 inserted**

20                  At the end of Schedule 1 insert:

21

22                  **Division 2 — Provisions relating to *Retirement Villages***  
23                                   *Amendment Act 2012*

24                  **4.       Exemption certificate taken to have been granted to**  
25                                   **certain persons**

26                  (1)   In this clause —

27                                   *commencement day* means the day on which the *Retirement*  
28                                   *Villages Amendment Act 2012* section 17 comes into  
29                                   operation;



- 1                    **relevant information**, in relation to a person, means  
2                    information as to the application of section 76 to the person.
- 3                    (2) Subclause (3) applies to a person (a **relevant person**) who  
4                    on the commencement day —
  - 5                    (a) is —
    - 6                    (i) the administering body of a retirement  
7                    village; or
    - 8                    (ii) in any way, whether directly or indirectly,  
9                    concerned in the administration of a  
10                    retirement village;
  - 11                    and
  - 12                    (b) is a person to whom section 76 applies.
- 13                    (3) On the commencement day, an exemption certificate is to be  
14                    taken to have been granted under section 77C to a relevant  
15                    person that has effect, subject to subclause (4) and  
16                    section 77C(3) and (4), for the period of 6 months from that  
17                    day.
- 18                    (4) If —
  - 19                    (a) an exemption certificate is to be taken to have been  
20                    granted to a relevant person; and
  - 21                    (b) the person makes an application under  
22                    section 77C(1) during the period referred to in  
23                    subclause (3),

24                    the exemption certificate —

  - 25                    (c) continues to have effect, whether or not the period  
26                    referred to in subclause (3) expires, until the  
27                    application is determined; and
  - 28                    (d) is cancelled by force of this subclause at the time of  
29                    that determination.
- 30                    (5) A person who on the commencement day —
  - 31                    (a) is employed or engaged in any way that, whether  
32                    directly or indirectly, is concerned in the  
33                    administration of a retirement village; and

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- 1                   (b) is a person to whom section 76 applies,  
2                   must give relevant information to the person by whom he or  
3                   she is employed or engaged within 14 days after the  
4                   commencement day.  
5                   Penalty: a fine of \$20 000.

6                   **5. Transitional regulations**

- 7                   (1) In this clause —  
8                   *amending Act* means the *Retirement Villages Amendment*  
9                   *Act 2012*;  
10                  *commencement day* means the day on which section 21 of  
11                  the amending Act comes into operation;  
12                  *Gazettal day* means the day on which transitional  
13                  regulations are published in the *Gazette*;  
14                  *transitional matter* means a matter of a transitional, savings  
15                  or application nature;  
16                  *transitional regulations* means regulations under  
17                  subclause (2).  
18                  (2) Regulations may prescribe anything necessary or convenient  
19                  to be prescribed in relation to a transitional matter in  
20                  connection with amendments made to this Act by the  
21                  amending Act.  
22                  (3) Without limiting subclause (2), transitional regulations may  
23                  modify the operation of section 6(2) in respect of any matter  
24                  specified in the regulations.  
25                  (4) Transitional regulations can only be made before the end of  
26                  the period of 12 months beginning on commencement day.  
27                  (5) If transitional regulations provide that a state of affairs is to  
28                  be taken to have existed, or not to have existed, on and from  
29                  a day (the *operative day*) that is earlier than Gazettal day,  
30                  the regulations have effect according to their terms as long  
31                  as the operative day is not earlier than the commencement  
32                  day.

- 1           (6) If transitional regulations contain a provision referred to in  
2           subclause (5), the provision does not operate so as —
- 3               (a) to affect in a manner prejudicial to any person  
4               (other than the State or an authority of the State),  
5               the rights of that person existing before Gazettal  
6               day; or
- 7               (b) to impose liabilities on any person (other than the  
8               State or an authority of the State) in respect of  
9               anything done or omitted to be done before Gazettal  
10              day.  
11

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